



COUNCIL ORDER No. 0015447

**BEFORE THE BUILDING TECHNICAL COUNCIL
On May 26, 2015**

IN THE MATTER OF the Safety Codes Act, Revised Statutes of Alberta 2000, Chapter S-1.

AND IN THE MATTER OF the Order dated November 27, 2014 issued by an Accredited Municipality (the Respondent) against a local establishment. (the Appellant).

Issue:

- 1.** The Appeal concerns the requirement of the Appellant to submit compliance documentation to the Authority Having Jurisdiction, from the engineering professionals and contractor(s) confirming engagement details.

The order was issued in contravention of the Alberta Building Code 2006 which states:

- 1) Division C, Part 2, Article 2.2.14.1.1. If a building is in an unsafe condition, *the* owner shall forthwith take all necessary action to correct the condition.
- 2) Division B, Part 8, Article 8.1.2.2. Precautions shall be taken to ensure that no person is exposed to undue risk.

The Order:

The Respondent, pursuant to Section 49 of the *Safety Codes Act*, on November 27, 2014 issued an order to address an unsafe condition and provision of a reasonable level of safety. The owner was ordered to:

- 1) Forthwith take precautions to ensure that no person is exposed to undue risk pursuant to Sentence 8.1.2.2.(1) Division B of the Alberta Building Code 2006; AND
- 2) Submit, in a form satisfactory to the Authority Having Jurisdiction, no later than 16:00 hours on the 5th day of December 2014; and before any work is started; notice from the owner to the Authority Having Jurisdiction of the date on which work will start, and a list of the names, addresses and telephone numbers of the contractor responsible for the work, and

professional engineers reviewing the work as per Division C Article 2.2.12.1. of the Alberta Building Codes 2006; AND

- 3) Submit, in a form satisfactory to the Authority Having Jurisdiction, no later than 16:00 hours on the 5th day of December, 2014, a stamped letter from a Building Envelope Engineer confirming their engagement in relation to the establishment and to submit, in a form satisfactory to the Authority Having Jurisdiction, pursuant to Article 2.4.3.1. Division C of the Alberta Building Code 2006, letters from the Building Envelope Engineer in the forms set out in Schedules A2, B1, and B2 of the Alberta Building Code 2006, AND
- 4) Submit, in a form satisfactory to the Authority Having Jurisdiction no later than 16:00 hours on the 5th day of December, 2014, a stamped letter from a Structural Engineer confirming their engagement in relation to the establishment and to submit pursuant to Article 2.4.3.1. Division C of the Alberta Building Code 2006, letters from the Structural Engineer in the forms set out in Schedules A2, B1, and B2 of the Alberta Building Code 2006, AND
- 5) Submit, in a form satisfactory to the Authority Having Jurisdiction, no later than 16:00 hours on the 2nd day of January, 2015, a full as-built review of the structure from each Engineer based on their scope of work noted in the A and B Schedules which outlines:
 - a) the current condition of the building,
 - b) the ability to occupy the current approved areas by the public,
 - c) any conditions of occupancy,
 - d) work to be done to the building,
 - e) timeline for the work to be done to the building, and
 - f) the frequency and timeframe for future reviews of the building.

OR

- 1) To forthwith prevent occupancy or use of the building and such occupancy and use is to remain stopped until such time as compliance monitoring has been completed in all required disciplines, and permission in writing for the occupancy of the building has been obtained from the Authority Having Jurisdiction (Building Safety Codes Officer); pursuant to Article 2.2.9.8. Division C of the Alberta Building Code 2006; AND
- 2) To forthwith take precautions to ensure that no person is exposed to undue risk pursuant to Sentence 8.1.2.2.(1) Division B of the Alberta Building Code 2006.

Appearances, and Preliminary, Evidentiary or Procedural Matters:

2. Appearing for the Appellant, the Appeal Panel heard from part owner of the Strathmore Hotel; as well as a representative for the Appellant.
3. Appearing for the Respondent, the Appeal Panel heard from the Building Safety Codes Officer, from the Accredited Municipality; as well as legal counsel for the Respondent.

4. At the commencement of the hearing, the Appellant and Respondent confirmed there were no objections to any members of the hearing panel, and the Safety Codes Council (Council) in general and the Appeal Panel in particular had jurisdiction to hear and decide the appeal.
5. The Chair then explained the process to be followed in hearing this appeal, and read out a list of the written material before the panel, consisting of the documents listed below, at paragraph 8 as items a) to k) in the Record. The Appellant and Respondent confirmed that there were no objections to any of the written material submitted to the Appeal Panel prior to the hearing.
6. The Appellant at the onset of the hearing submitted a recent Certificate of Title, to clarify there were no liens on the property. The Appellant confirmed the property address has not changed nor have the owners subsequent to the issuance of the order. The document was accepted as Exhibit A.
7. The Appellant at the onset of the hearing also submitted photographs for consideration, taken by a contractor approximately 10 months ago, to depict the work done in the basement. The Appellant stated that the Safety Codes Officer (SCO) had observed what's in the photographs and that the photographs submitted by the Respondent were out dated. The Respondent took the opportunity to review the photographs and had no objection to their submission. The photographs were accepted as Exhibit B.

The Record:

8. The Appeal Panel considered, or had available for reference, the following documentation:
 - a) Copy of the order dated November 27, 2014 (pages 1 to 5)
 - b) Notice of Appeal and Request for Stay of Order dated November 27, 2014 (pages 6 to 11)
 - c) Acknowledgement Letter dated December 5, 2014 (page 12)
 - d) Stay of Order Letter dated December 18, 2014 (page 13)
 - e) Appeal Hearing Brief Preparation Guide (page 14)
 - f) Written Notification of Appeal Hearing (pages 15 & 16)
 - g) Brief of the Appellant (pages 17 to 294)
 - h) Brief of the Respondent (pages 295 to 699)
 - i) Exhibit A – Certificate of Title
 - j) Exhibit B – Photographs submitted at Hearing by the Appellant
 - k) Exhibit C – Photographs submitted at Hearing by the Respondent

Provisions of the Safety Codes Act:

9. The applicable legislation is the Safety Codes Act S-1, RSA 2000 (the Act). Further, as the Authority Having Jurisdiction used the existing legislation in making its decisions, the Appeal Panel will apply the Safety Codes Act in effect at the time of the Respondents order of November 27, 2014. Specifically:

Section 5

The owner of anything, process or activity to which this Act applies shall ensure that it meets the requirements of this Act, that the thing is maintained as required by the regulations and that when the process or activity is undertaken it is done in a safe manner.

Section 49(2)

An order may be issued to a person who provides services that are the subject-matter of the order or to the owner, occupier, vendor, contractor, manufacturer or designer of the thing or to the person who authorizes, undertakes or supervises the process or activity that is the subject-matter of the order, or may be issued to any 2 or more of them.

Section 52(2)

The Council may by order

- (a) Confirm, revoke or vary an order, suspension or cancellation appealed to it and as a term of its order may issue a written variance with respect to any thing, process or activity related to the subject-matter of the order if in its opinion the variance provides approximately equivalent or greater safety performance with respect to persons and property as that provided for by this Act.

Provisions of the Alberta Building Code 2006 (ABC 2006):

10. The Alberta Building Code 2006 provides, *inter alia*:

Division B

Part 8 Safety Measures at Construction and Demolition Sites

8.1.2.1. Application

- 1) Where a *building* is undergoing construction, *alteration* or demolition, measures shall be taken at the *building* site in conformance with this Code. (See Appendix A.)

8.1.2.2. Protection from Risk

- 1) Precautions shall be taken to ensure that no person is exposed to undue risk.

Division C

Part 2 Administrative Provisions

2.2.9.8. Refusal to Proceed

- 1) The *authority having jurisdiction* may refuse to allow any *building, project, work* or *occupancy* that would not be permitted by the Safety Codes Act, this Code or other legislation.
- 2) The *authority having jurisdiction* may refuse to allow any *building, project, work* or *occupancy* if
 - a) incorrect information is submitted, or
 - b) the information submitted is inadequate to determine compliance with the

provisions of the Safety Codes Act, this Code or other legislation.

- 3) A person who is refused a *permit* may appeal the refusal in accordance with the Safety Codes Act and regulations made pursuant to the Act.

2.2.9.9. Responsibility for Compliance

- 1) Neither the issuance of a *permit*, nor inspections made by the *authority having jurisdiction*, shall in any way relieve the *owner* of a *building* from full responsibility for carrying out the construction or having the construction carried out in accordance with the requirements of the Safety Codes Act and regulations made pursuant to that Act, this Code, or the *permit*, including compliance with any special conditions required by the *authority having jurisdiction*.
- 2) The *owner* shall ensure that all activities that take place on the site meet the requirements of this Code.
- 3) The constructor shall ensure that
 - a) precautions are taken to safeguard the public and protect adjacent properties,
 - b) the methods used in demolition or erection are safe, and
 - c) the material and equipment used on site meet the requirements of this Code.

2.2.12.1. Notification Before Starting

- 1) Before *work* is started on a *project*, the *owner* shall give notice to the *authority having jurisdiction* of the date on which *work* will start.
- 2) The *owner* shall give notice in writing to the *authority having jurisdiction*
 - a) before starting *work*, listing the name, address and telephone number of
 - i. The *constructor* or other person responsible for the *work*,
 - ii. Any *professional engineer, registered architect* or *registered professional of record* reviewing the *work*, and
 - iii. Any inspection or testing agency engaged to monitor the *work*, and
 - b) of any change in or termination of employment of those persons listed in Clause (a) during the course of construction, immediately after the change or termination occurs.

2.2.14.1. Correcting an Unsafe Condition

- 1) If a *building* is in an *unsafe condition*, the *owner* shall forthwith take all necessary action to correct the condition.
- 2) The *authority having jurisdiction* may order the *owner* of any *building* to correct any *unsafe condition*.
- 3) If immediate measures must be taken to avoid an imminent danger of fire or risk of accident, the *authority having jurisdiction* may take any action deemed necessary to reduce the danger of fire or risk of accident, without notice, and at the expense of the *owner*.

2.4. Professional Design and Review

2.4.1.1. Application

- 1) The requirements of Subsection 2.4.3. apply to an *owner* who applies for a *building permit* for a *building* that falls within the scope of Sentence 2.4.2.1.(3) or (4).
(See Appendix A)

2.4.2. Professional Involvement

2.4.2.1. General

- 1) If drawings or specifications are required to be imprinted with the seals or stamps of a *registered architect* or a *professional engineer*, the seals or stamps must be signed and dated by the respective professionals in accordance with the enactments that govern their professions.

- 2) If the size or complexity of a *project* may give rise to special safety concerns, the *authority having jurisdiction* may require
 - a) that all or part of the plans and specifications of a *building* be imprinted with a stamp or seal affixed by a
 - i) *professional engineer* where *engineering work* is involved,
 - ii) *registered architect* where *architectural work* is involved, or
 - iii) both a *professional engineer* and *registered architect*, and
 - b) that *field reviews* during construction of a *building* be performed by a
 - i) *professional engineer* where *engineering work* is involved,
 - ii) *registered architect* where *architectural work* is involved, or
 - iii) both a *professional engineer* and *registered architect*.

Position of the Parties

11. Appellant

From the Appellants' submissions and testimony the Appellants' position is summarized as follows:

- a) They are committed to making the necessary repairs to make and keep the building safe for its current use.

- b) With respect to point 2 of the order, a Construction Group submitted an e-mail to the SCO on November 25, 2014 prior to the order requesting a one month extension.

- c) A Professional Engineer, from a structural consulting engineering firm has been engaged as the Structural Engineer. Previously with another company, the Engineer has “ full knowledge of past reviews and envelope reviews” which the appellant feels is the best path going forward. They (the appellant) acknowledge they had not yet received a final set of drawings from the engineer.

- d) The appellant has been frustrated by the process of engaging a structural engineer and a contractor to do the recommended work. Several factors, including “the flood” have had an impact on this process; an issue with respect to resources.

- e) They have been frustrated by roadblocks and red tape imposed by the Municipality. They question the need for permits and are frustrated that targets keep changing; it can be described as taking one step forward, two steps back. They are always being asked for additional information.

- f) They need to do the work at their own pace as funds allow; they recognise the need to do it right and need time to properly schedule.
- g) They have been frustrated by the SCO interfering with the engineers and contractors engaged, suggesting his “interference and inconvenience” may impact their willingness to remain involved in the project.
- h) Early reports from the building envelope specialist suggested leaving the envelope rehabilitation until after the structural issues were complete. The Municipality forced them to complete the outside first, which has delayed the foundation being completed.
- i) With respect to point 3 of the order, the same Envelope Engineering company is still engaged as the building envelope specialist.
- j) As indicated in the November 17, 2011 e-mail from the engineer the request from the Municipality regarding the structural integrity of the entire building is almost an impossible request to fill.

12. *In response to questions the appellant advised:*

- a) They have not received the required drawings from the structural engineer.
- b) Regarding the April 30, 2012 letter from the building envelope, which included a three phase approach, the Appellant advised the third site review of October 16, 2012 was the last site review from the Envelope Engineering company.
- c) The appellant said she did not know whether the Municipality had received a copy of Engineers letter of October 16, 2012.
- d) Reference was made to the January 23, 2012 report from an Engineering company. The respondent’s representative asked whether the appellant’s representative had read the report, suggesting it should be given more weight than representatives “recollection” of things. The appellant’s representative agreed.
- e) Reference was made to a photograph of a loose flap of Tyvek on the second floor exterior, taken in December of 2014 and the question asked whether it was still in that state today. The appellant could not say, as it is impossible to see from the ground and the second floor access has been closed.
- f) The building is not a historical restoration.

13. Respondent

From the Respondents' submissions and testimony, the Respondents' position is summarized as follows:

- a)** With their submission the Respondent submitted 3 new photographs of the basement taken by the SCO on January 20, 2012. The Appellant objected to the submission questioning the relevance, as the photographs were taken 3 years ago and the order in question was issued in November of 2014. Following a brief deliberation the Appeal Panel agreed to accept the photographs as evidence with respect to part of the history, pointing out the panel would determine if necessary the weight and relevance if any, to be placed on the submission. The photographs were accepted as Exhibit C.
- b)** A series of reports from Engineers have been received by the Municipality as the Authority Having Jurisdiction, identifying the condition of the establishment as posing risks and dangers of serious injury to persons or property. These reports have identified conditions to the continued safe use of the building and these conditions have not been met.
- c)** The November 27, 2014 order was necessary noting a number of different contractors have been involved.
- d)** Aside from structural safety concerns, building envelope concerns have been identified. Despite requests for the same, nothing has been provided to the Municipality to confirm that these concerns are being addressed, or that the present use and occupancy of the building is safe from a building envelope perspective, or will remain so during structural remediation.
- e)** The Municipality holds the safety of the public and any adjacent property to be of paramount importance. Division B, Sentence 8.1.2.1. 1) and 8.1.2.2. 1) apply to any building where construction, renovation, or maintenance activities are taking place. Planning, development, building, and fire staff have been involved with the building over at least the past 7 - 8 years by way of monitoring, inspecting, meeting with various parties, and seeking a resolution to the condition of the building to ensure that public safety is not exposed to an undue risk.
- f)** Given the age of the building, it was constructed, expanded, and maintained for many decades prior to codes coming into effect. The limited maintenance over the past approximately 10 - 15 years and the age, gives rise to safety concerns leading the Municipality, as the authority having jurisdiction to seek professional input to ascertain the current condition of the building, ability to safely occupy, conditions of occupancy, work to be done to the building, timeline for the work to be done to the building, and the frequency and timeframe for future reviews of the building.
- g)** An as-built review would give a framework for the Municipality, with a peace of mind the rehabilitation process would be in place with professional involvement. Considering the age of the foundation, professional involvement is necessary to monitor the process.
- h)** The 2011 Structural Engineers report leads one to believe an as-built review of the structure is the way to go.

- i)** The November 27, 2014 Safety Codes Order was issued to ensure that the public were not put at risk. Engineers were changing or appeared to be changing and recommendations for monitoring in previous reports from engineers were not being implemented by the owner. Through the past several years and through change in hotel management, contractors, engineers, and engineering companies, the Municipality has continued to seek a schedule for the rehabilitation and monitoring of the condition of the building. In addition, Building Code schedules endorsed by the professional engineer of each of the Structural and Building Envelope disciplines would ensure that although the Code may not have existed in the initial 60 - 70 years of the hotel, appropriate professionals would be regularly assessing the building and directing the activities towards remediating it. Engineering reports have noted, based on visual inspections, many areas needing work. Fire, electrical, plumbing, gas, and building SCO's have reviewed the building and noted many items that need to be addressed. The Health Inspector has also noted many items needing to be addressed.
- j)** In recognition of the items being required within the Order, the Municipality has received the March 26, 2015 letter from the engineer along with the Schedules whereby they confirm that the building is suitable for continued use and that he has been frequently monitoring the building.
- k)** With regard to item #2, the Municipality has not received a letter from the owner outlining the contractor, contractor's address, phone number, and email address, and similar information regarding the professionals involved.
- l)** With regard to item #3, the Municipality has not received a stamped letter from the Building Envelope Engineer confirming their engagement.
- m)** With regard to item #5, the Municipality has not received a full as-built review from each Engineer including the details identified in the Order.
- n)** It is envisioned the documents being required within the Order will provide the owner with detailed direction to plan future activities with some contingencies for the unforeseen.
- o)** These documents will provide the Municipality with assurances, supported by professionals, that the public are not put to any undue risk through the professional's involvement in ongoing monitoring and involvement in remediation and rehabilitation work.
- p)** The property has a long history of inspections and reviews identifying serious issues. The structural engineer's report of November 19, 2010 references long term deterioration of framing and foundation elements warranting review. The structural engineer's report of July 27, 2011 identifies issues. The engineer's report of October 18, 2011 notes a recommendation of no further occupancy of the building until significant steps have been taken to address walls and framing members.
- q)** The January 23, 2012 report from the structural engineer raised a lot of issues and noted that all architectural, mechanical, electrical and building envelope items were outside of

their scope of work. The report noted the main floor may continue to be occupied provided repairs to the foundations and main floor framing be completed within the next two to three years and that the exterior of the structure be protected from moisture and the elements until the building envelope is reinstated. The report relates to safety during that two to three year period based on completion of repairs which have not occurred.

- r) Over the last four and a half years 13 orders have been issued from the *Municipal Government Act*, the *Safety Codes Act* and the *Alberta Health Act*.
- s) The SCO's reaction to the November 25, 2014 e-mail from a construction company was a concern in finding another engineering firm would be involved.
- t) There were numerous photographs taken by the SCO on various dates as identified in the Respondents documented submission. The SCO states the photographs depict the changes happening to the building.
- u) In response to a specific question from the panel with respect to what was unsafe the SCO responded it's an accumulation of a number of things such as seeing daylight through the basement wall, deterioration of wood, cracks in the walls, the lower roof membrane and the condition of the chimney.
- v) They have empathy for the owners funding issues in the rehabilitation plan; however public safety cannot be compromised.
- w) The Municipality's position is that a reasonable, logical, sequential plan by professionals must be addressed. Without a schedule for work as noted in point 5 of the order with respect to the condition of the building, what assurance does the Municipality have that the building is not going to collapse.
- x) The expectation with respect to the issuance of the order is that the Appeal Panel confirm non-compliance with points 1 to 5 and go to the second set of recommendations with respect to preventing occupancy or use of the building until compliance monitoring has been completed. Alternatively if the panel is comfortable there is no imminent danger, vary the order with specific dates.

Reasons for Decision (Findings of Fact and Law):

14. The Appeal Panel makes the following findings:
 - a) The Appeal Panel's jurisdiction is to hear an appeal of the Respondent's orders and render a decision to confirm, revoke, or vary the Respondent's orders, based on its interpretation and application of the ABC 2006 and *Safety Codes Act*. Specifically, the Appeal Panel must address the issue of whether there is an unsafe condition of the building and if precautions should be taken to ensure no person is exposed to undue risk.
Section 8.1.2.2 of the Alberta Building Code states that "Precautions shall be taken to ensure no person is exposed to undue risk."
Section 2.2.14.1 of the Alberta Building Code references Correcting an Unsafe Condition states:

- 1) If a *building* is in an *unsafe condition*, the *owner* shall forthwith take all necessary action to correct the condition.
 - 2) The *authority having jurisdiction* may order the *owner* of any *building* to correct any *unsafe condition*.
 - 3) If immediate measures must be taken to avoid an imminent danger of fire or risk of accident, the *authority having jurisdiction* may take any action deemed necessary to reduce the danger of fire or risk of accident, without notice, and at the expense of the *owner*.
- b) The decision focuses on structural and building envelope issues only. All parties acknowledge the building is in need of repair in these two areas.
- c) Engineering reports and past inspections confirm the need of repair in these two areas.
- d) The Appeal Panel finds that the building in respect to the matters of the appeal to be in an unsafe condition. It was also found that the building has other areas that have been determined / deemed unsafe for occupancy, however these are not matters of this appeal and subject to the confirmation by the professionals of record may not prohibit occupancy of other portions of the building. This is acknowledged by the Appellants Representative who stated at the hearing she could not comment on the condition of a portion of the upper exterior as it was not safe to go to the second floor to view the area.
- e) The Appeal Panel finds the evidence supports there are deficiencies not being addressed in a timely or structured manner as recommended by the engineering specialists and identified by the SCO.
- f) The Appeal Panel accepts the testimony of the Respondent with respect to the condition of the building. The SCO has identified requirements for compliance, which the owner has not complied with; specifically the recommendations of the engineering specialists and a request for planned constructor intervention.
- g) The Appeal Panel finds that the owner has not complied with recommendations of the Engineering Specialists. The Structural Engineer, in a report dated January 23, 2012, noted deficiencies and made recommendations to be followed up within a specific 2 to 3 year period, noting the work should start as soon as possible such that repairs could begin in a timely fashion. In an April 30, 2012 report, an engineer's Building Envelope Review recommended a three phase plan for restoration which included a monitoring and planning phase. The Engineer's recommendations from the Structural Engineer and Building Envelope Engineers have not been followed up on by the owner sufficiently or in a timely fashion.
- h) The Appeal Panel accepts the photographic evidence of September 24, 2014 and December 8, 2014 which identifies structural and building envelope deficiencies. The photographs depict structural issues such as cracks in the exterior walls and noted as light being seen through the foundation wall when pictures were taken, indicative of ongoing foundation issues.
- i) The Appeal Panel accepts photographic evidence showing some work has been done on the foundation since 2012.

- j) The Appeal Panel acknowledges the March 26, 2015 letter from the Structural Engineer which related to the proposed remediation of foundation elements supporting the building. The report offered an opinion that it was believed the building structure was considered suitable for continued use, under its current occupancy type and the proposed construction schedule over the next 12 to 18 months, still appeared to be appropriate.
- k) The Appeal Panel supports the contention that a structured sequential plan and monitoring by engineering specialists and constructor are warranted in conjunction with a building permit, in order for the Authority Having Jurisdiction to ascertain the current condition of the building and assurance that safety to the public is not put to undue risk through ongoing professional monitoring and involvement.
- l) The Appeal Panel recognise the Authority Having Jurisdiction has the authority to enforce the prevention of occupancy or use of the building within a specific defined period, should the owner not comply with specific directives of the order.

UPON REVIEWING the Order **AND UPON HEARING** the Appellant and the Respondent; **THIS COUNCIL ORDERS THAT** the Order is **Varied** as follows:

- 1) To forthwith prevent occupancy or use of the building and such occupancy and use is to remain stopped until such time as permission in writing for the occupancy of the building has been obtained from the Authority Having Jurisdiction upon the successful completion of an acceptable scope of work within an agreed schedule; pursuant to Article 2.2.9.8. Division C of the Alberta Building Code 2006; AND
- 2) To forthwith take precautions to ensure that no person is exposed to undue risk pursuant to Sentence 8.1.2.2.(1) Division B of the Alberta Building Code 2006.

OR Alternatively

- 1) Forthwith take precautions to ensure that no person is exposed to undue risk pursuant to Sentence 8.1.2.2. (1) Division B of the Alberta Building Code 2006; AND provide by the active building permit, verification of professionals of record and constructor.
- 2) Submit, in a form satisfactory to the Authority Having Jurisdiction, no later than July 31, 2015, a full review of the structure from each Engineer based on their scope of work noted in the A and B Schedules and also includes:
 - a) the current condition of the building expressly related to the structural and building envelope and any conditions or work required for remediation,
 - b) the ongoing ability to occupy the currently approved areas by the public for the term of the building permit,
 - c) any conditions of occupancy,
 - d) work to be done to the building.
- 3) A revised building permit must be obtained for the scope of the remediation of the structure and the building envelope beyond the original building permit work.

Dated at Edmonton, Alberta this 26th day of June 2015

Chair, Building Technical Council Appeal Panel